THE STREET RAILWAY SETTLEMENT IN CLEVELAND.

SUMMARY.

The law as to franchises in Ohio; the "consent law," 543 —Three difficulties: consents, reaching the center, finances. Mayor Johnson's guarantees, 545.—Earlier competing companies, 548.—Negotiations with the main company, 549.—Physical value of property; questions as to paving, overhead charges, 551.—Method of determining franchise values, 553.—Three transactions for effecting the transfer,—the sale, 559; the security grant, 559; the lease to the Municipal Traction Company, 561.—Financial calculations and expected economies of the Traction Company, 566.—The strike of the first few weeks and its defeat, 571.—Mayor Johnson's attitude, 574.

A MOST remarkable chapter of street railway history in this country has just come to an end in Cleveland. A new method of attacking a public utility in private hands has been successful, and a new solution of the street-car question has been placed on trial. It will take some time, perhaps years, to demonstrate beyond cavil the strength or weakness of this solution, but the time has already arrived when the proposed mode of solution can be described as something already undertaken.

Street railway franchises in Ohio can only be granted for twenty-five years. The Rogers law, passed about the middle of the last decade, provided for fifty-year street railway franchises in Ohio, but through a popular uprising was repealed before the street railways had been able to take advantage of it in Cleveland, as they did do in Cincinnati. This was due, in part at least, to the quarrel between Mayor McKisson, the Republican mayor between 1895 and 1889, and the late Senator Hanna, who

was then the most prominent street railway magnate in Cleveland.

The old company, known as the Cleveland Electric Railway Company, which was operating, until April, 224 miles of track in the streets and highways of the city and county, had secured franchises at various times, which were to expire at various intervals in the future. In fact, on a few miles the franchises had already expired.

The city in its early grants to two of the lines had reserved the right to regulate fares, and almost every one supposed that it still retained this right. But ordinances passed in 1898, to reduce the fare to four cents, were declared to be illegal by the United States Supreme Court on May 31, 1904, because of the wording of an ordinance for the consolidation of some of the roads in the city, and for their electrification and extension, which had been passed in February, 1885. For over ten years no new long-time franchises had been granted in the city, altho some had been secured in the suburbs. In time the old franchises would all expire. In fact, their average life in the city was conceded by the company, at the close of 1907, as less than four years. The railway laws of Ohio, however, had been passed in the days of street railway domination and were hard to amend. They appear drawn with a special purpose of making it easy for an old company to secure a renewal of its grant, and to make it impossible for any other company to compete for the grant. This was brought about chiefly by the so-called consent law. Under that law a company which had once secured the consent of the majority of the abutting property owners of any street, need not secure them again when its franchises ran out and it sought a renewal. But a new company wishing to bid for the franchises at the time of expiration of the old grant must present to the Council the consent of over one-half of the property owners upon

each street of the proposed route. The only effective course open for a new company was to find a route, if possible, along streets not already occupied by an existing company. This was the method selected by Mayor Johnson a few months after his election in the spring of 1901, as the best method of securing reasonable fares.

Any control of rates by a state commission was out of the question, for, had such a commission been created, it would surely have been manned by friends of the existing street railways. The remedy of municipal ownership, to which the mayor is thoroughly committed in principle, was also out of the question, because not allowed by state law. The course adopted, of fighting a monopoly with a competitor, has been so universally condemned by experience that, in resorting to it, Mr. Johnson was careful to introduce safeguards against consolidation with the existing company, which during several years of warfare proved absolutely sufficient for the purpose and deserve to rank as a new discovery in the public utility controversy. The method adopted was that of the organization of a street railway company on ordinary lines, with full power to sell stock for its legitimate purposes, and operate its road. This company was then to lease the property to a holding company, whose entire capital stock of $10,000 should be owned by a small body of trustees. The stock was so tied up that no minority of the trustees could sell a controlling interest in the holding company.

Three great difficulties confronted this experiment of competition by a company pledged to three-cent fare in a city where the average fare was 4.71 cents. These three difficulties were: to secure consents even on streets where there were no tracks; to get into the heart of the city, where there were no unoccupied streets; and to raise money.

A large sum, amounting to tens of thousands of dollars, was spent by the old company in paying property owners to refuse consents to the new company or to revoke consents already given. The new company was also finally forced to pay a good deal to obtain consents. Sometimes these payments took the form of an agreement with the abutting property owners to pay for all the paving between the curbs and the tracks,—an expense otherwise borne by special assessment upon the owners. In one case it was found impossible to get a sufficient number of consents on one or two streets which were sections of a continuous road. Therefore, four streets, Willett, Hanover, Fulton, and Rhodes, were united in one street, known as Fulton Road, so that the consent of one-half of the property owners on the entire street could overcome the failure to get a majority of some of the previous four streets.

The second difficulty, that of reaching the heart of the city, was easier. By an old Ohio law a company having eight miles of track could run its cars over one mile of track in the congested district of a city. It could not use the overhead construction, but must furnish its own power; and a court would determine the rental to be paid for the use of the track. The new company in Cleveland took advantage of this provision only for a short distance, on Gordon Avenue, on the west side of the city. A better method was found through a remarkable case of foresight. In its early legislation on street railways, beginning in 1859, the city had reserved the right to grant to any other company or companies permission to use the tracks, overhead construction, and power in certain congested districts, known as neutral territory, on payment of a rental fixed by the Council. In most cities such reserved rights, if they ever existed, were abandoned by the city, but in Cleveland it happened on two different occasions, many years apart, that two lines, one coming in from Newburg

on the south-east side of the city, and one, controlled at the time by Mr. Johnson, from South Brooklyn on the south-west side, had made use of this privilege. The people thus had realized the advantage of neutral territory, and had refused to abandon it. Hence it was possible for a company once planted, and doing business outside of the central zone, to reach the heart of the city, provided the administration were as friendly to the new street railway enterprise as this one has been for seven years.

The final difficulty in the way of building a competing three-cent fare company was financial. Not only was it necessary to convince possible investors that a company with this fare could pay 6 per cent. on its actual investment, but it was necessary to meet the opposition of the bankers and brokers throughout the country. Almost all the moneyed interests hoped for the failure of the experiment. Litigation by the old company and the securing of 58 injunctions during the last seven years scared away others. The one who first secured franchises, John B. Hoefgen, in 1902, found it difficult to buy material for other street railways in which he was interested.

Mayor Johnson, who never owned any stock or bonds in the low-fare companies, guaranteed some of their notes, and in company with the editor of the Press, the evening paper of largest circulation in the city, guaranteed 6 per cent. dividends on the stock. Money was thus raised at a critical period. When, subsequently, in 1906, the courts declared some of the franchises were tainted by the mayor's alleged financial interest, he withdrew his guarantees, and the company took still other steps to meet the court's decision. The higher courts, to which the case was appealed, had not decided whether any franchises had really been invalidated by the mayor's

action when all litigation was closed by the lease. The mayor's guarantees at one time, and the large financial help of Mr. B. T. Cable, of New York City, a friend of the mayor's, at another time, tided over the situation until popular subscriptions of over $1,000,000 in small amounts by 2,400 stockholders were secured.

The first cars were run on November 1, 1906, and at the time of Mr. Johnson's election for his fourth term, in November, 1907, the new company was operating 16.22 miles of its own track and was running its cars over several miles of track of the old company. Its business had increased from 200,456 fares in January, 1907, to 696,876 fares in November of that year, and reached 1,033,609 in March, 1908, with every prospect of continued rapid growth.

As already intimated, some companies that had obtained franchises to run cars at three cents had been forced out of business by the courts. Two companies only remained in the field, working in perfect co-operation and controlled by the same persons,—the Forest City Railway Company, with an investment of over $1,500,000 and the Low Fare Company, with an investment of only $64,000. The larger company was leased July 3, 1906, to the Municipal Traction Company, which by a traffic agreement operated cars on the tracks of the Low Fare Company. As the franchises of both the Forest City and the Low Fare Companies were subsequently surrendered and the lease with the Municipal Traction Company cancelled, as part of the agreement under which a new lease was made and a new franchise granted for all the streets of the city, it is unnecessary now to describe the terms of these early franchises and lease. It is sufficient to remark that the later documents were modelled after the early ones, and were improvements upon them.

In the early part of the summer of 1905 Mayor Johnson offered to recommend to the City Council the purchase of the property of the old company, the Cleveland Electric Railway Company, by a holding company, at a price, in addition to its liabilities of about $9,000,000, of 85 on its stock, whose par value was $23,400,000. On the purchase price of the stock 5 per cent. interest was to be paid. The company rejected this offer, and also another of 60 at 6 per cent. on the stock in May, 1907. But after the election of Mr. Johnson by 8,659 majority in 1907, and with a plurality over Mr. Burton of 9,326 in a total vote of about 88,041, the managing editor of the Cleveland Plain Dealer, Mr. E. H. Baker, induced the Cleveland Electric Railway Company to appoint a prominent and highly respected attorney, Mr. F. H. Goff, to represent it, with full power in the settlement of the franchise controversy. In like manner the City Council appointed Mayor Johnson as its representative, and it was arranged to hold open sessions in the Council Chamber with all of the Council present who could find it practicable to attend. Between December 4, 1907, and April 27, 1908, nearly one hundred of these meetings were held. The verbatim reports fill nine volumes of over 500 pages each, while such of the exhibits as were printed fill four more volumes, and many reports never were embodied in the proceedings.

It was agreed at the start that, if the city and the Cleveland Electric Railway Company, through their representatives, could agree upon the physical and franchise values and the value of the company as a going concern, then a holding company should lease all the street railway properties of the city at an agreed interest upon these values, for the purpose of operating them as much in the interest of the city as was practicable without actual municipal ownership. It was understood that the properties of the Forest

City and the Low Fare Companies should be accepted at their actual cost of $1,805,600. It was recognized that $200,000 or more of this amount was not actual investment in physical property, but had been spent in necessary litigation, purchase of consents, and the like; and it may be remarked that the investment covered not only the 16 miles of track owned by the company, but many new and expensive cars operated on tracks of the old company, and a considerable amount of new track and other material on hand ready for further construction. In view of the fact that the old company was to be paid the value of its franchises and something for good will, or as a going value, while nothing was to be given on either account to the new companies, it was thought fair to allow their sale at the actual cost, including the legal and other expenses just mentioned.

The contest settled about the value of the Cleveland Electric Railway Company. It was agreed that this property was to be taken over as of January 1, 1908. The physical property was divided into twelve schedules, and the city on the one side, through the mayor, and the company on the other side, through Mr. Goff, appointed an expert to value each schedule. The result finally reached for the 224.5 miles of track in the streets was as follows: There were 14.5 miles of track in the car barns and yards and 188 miles of paving. Of the track in the streets, only 17 miles had less than 80-pound rails and 178 miles were 90-pound and upwards. The rails were taken at $38.80 per ton, when new, and the copper at 17 cents per pound. The depreciation, according to agreed rules, was deducted from all portions of the plant, and the final result is here given:

PHYSICAL VALUE SCHEDULE.

Description.	*Value.*	*Per Mile.*
Track	$3,800,000.00	$16,926.50
Pavement	1,721,000.00	7,665.92
Cars	2,634,563.23	11,735.25
Land	1,134,473.96	5,053.34
Buildings, except power and battery buildings	842,987.00	3,754.95
Overhead construction, including feed wire	1,007,957.55	4,489.79
Return circuits	95,409.02	424.99
Three power stations and buildings therefor	2,216,990.93	9,875.24
Storage batteries and buildings therefor	289,862.94	1,291.15
Shops, shop stores and tools, rails, ties, and track	427,074.37	1,902.33
Miscellaneous rolling stock and equipment	154,765.76	689.38
Overhead charges not included in any other of the above schedules	709,530.00	3,160.49
Total	$15,034,614.76	$66,969.33

Only two of the above items caused much difficulty. These were pavement and overhead charges. Mr. Johnson contended that $1,721,000 should not be paid for paving. The pavement was in the nature of a tax, and was never included in the assets of the company for taxation or assessed by the city or county. Therefore, when a franchise expired, a company had no rights whatever in the streets, and could be forced to take up its rails and at much expense restore the paving to a good condition. Indeed, when the company, on the expiration of the franchise for several miles of track in Central and Quincy Streets, had torn up its track in April, 1907, it had restored the paving without charge to the city. Even if the company could claim any title to its paving, as it did to its franchises, it could only be of such proportion of the total value of the paving as the life of its unexpired

franchises bore to the total life of these franchises. This proportion was only about 13 per cent.

On the other hand, the company claimed that the grants to the new companies had explicitly provided that, if the city or another company ever bought them or took them over at the end of their franchises, the then physical value of the paving should be paid for. The natural reply to this, of course, was that the new companies were giving to the city in the shape of three-cent fares so large a consideration as to make their case very different from that of the old company, which paid no franchise tax and charged a five-cent fare with eleven tickets for 50 cents. In the end, however, the city conceded the entire claim of the company relative to paving.

The other point of difficulty, which was the cause of far greater discussion and never was settled, was the item of overhead charges, $709,530. The company claimed that upon the conceded values of the other items ($14,325,084) about 20 per cent. should be allowed for brokerage charges and other costs of financing, and for such items as engineering, supervision, office expenses, insurance, taxes and losses during the progress of the work, and allowance for errors in calculations. The mayor contended that most of the necessary financing and overhead charges, except that of the salary of the president of the company and a few assistants, had been fully provided for, in the case of land, cars, pavement, stores, and buildings, and in the rails, ties, and other track material, aside from laying, because in the prices agreed upon for these items there had been included contractors' profits for the material delivered at the place needed or for the construction of the buildings On this supposition the allowance for overhead charges was about 13 per cent. on the remaining $5,510,-257, and this, the mayor contended, was sufficient. He also, at a later time, in one of the official conferences

claimed that over 10 per cent. too much had been conceded by him with respect to most of the other large items, and that the life of the track, when new, was much less than the twenty years which had been conceded.

The company maintained that it was impossible to float an investment of fifteen to twenty millions without at least 5 per cent. brokerage charges. The mayor said that, with nearly $180,000,000 in the savings-banks of Cleveland bearing only 4 per cent. interest, it would be easy to secure all the money needed for a 6 per cent. stock such as was to be issued under the terms of the opposed lease. It seems to the writer that 5 per cent., or about $700,000 more, could well have been allowed for overhead charges, while almost the entire $1,721,000 conceded for pavement should not have been allowed. In the end a difference of $2,077,000 was left unsettled with respect to the overhead charges, but the sum of $14,325,084 was agreed on as the value of the other schedules of physical value.

Messrs. Johnson and Goff next proceeded to determine the value of the unexpired franchises. Acting on data gathered by Mr. H. J. Davies, secretary of the Cleveland Electric Railway Company, and the writer, it was agreed that 6 per cent. should be taken as the proper yearly increase of gross earnings until the date fixed as the end of the average life of the franchises, and that 64 per cent. of the gross receipts should be taken as the proper operating expenses, depreciation, and taxes. It was assumed that the fares would remain as they had been. They averaged 4.71 cents per passenger, while the other receipts, from mail, express service, and the like, brought up the total to 4.81 cents.

After many conferences it was agreed that most of the franchises outside of the city limits possessed no value.

The earnings did not pay even 6 per cent. on the physical values and did not seem likely to, during the remainder of the life of those grants, even tho the franchises in the suburbs had a much longer time to run than in the city. The company was apparently surprised to find at what a loss it was carrying most of its suburban traffic.

The method of determination in the suburbs cannot be fully elaborated here, but some of its chief factors were as follows. A count was made for several days of all the passengers entering and leaving the cars in the suburbs and of those crossing the city boundary. It was then easy to compute the gross revenue. The city limits were in every case from four to six miles from the centre of the city. Most passengers came to the heart of the town, and it was proved and acknowledged that three cents was no more than a fair return for the traffic within the city, which averaged much shorter rides than from the suburbs to the public square. Therefore, for the long haul a company doing business in the suburbs would certainly have to pay three cents to any company within the city that should take its passengers on to their destination. The gross revenue then left for the suburban traffic consisted of the suburban fare on the traffic wholly in the suburbs and all above three cents for the traffic crossing the city boundary, and a percentage of the miscellaneous items, based on the total mileage outside of the city. From this gross revenue, as thus determined, were deducted the operating expenses per car mile in the suburbs, and interest at 6 per cent. on the investment appropriate to the traffic there. The car mile expenses of the whole city (16.24 cents) were adjusted to conditions in the suburbs, by slight changes taking into account differences in platform expenses, owing to the cars running faster, the lesser number of accidents, and so on. Inside the city the attorney for the company and the city agreed on the term of the major portion of most

of the franchises, and the mayor and Mr. Goff agreed to most of the balance. Then the problem remained of how to value franchises expiring at different times on different lines.

This was done by a method that can be described by the following illustrations:—

One franchise on one route, known as the Euclid line, expires July 13, 1913, or 5.5315 years distant from January 1, 1908. This number of years multiplied into the present yearly earnings of the line, $521,984, gives total earnings during the future life of the grant, without allowance for growth, of $2,887,355. Again, the Woodland and Lorain Street franchises expired February 10, 1908, or 0.1123 years after January 1, 1908. This multiplied into the yearly earnings of the line, $828,844, gives $93,079. The total earnings of the two lines for the period of the grant, $2,980,435, divided by the sum of the yearly earnings, $1,350,828, gives 2.2 years as the average life based on earnings for those two lines. In this way the average life of all the lines and franchises was found to be 3.1929 years from January 1, 1908, making the average date of expiration March 11, 1911. Since several lines reach the heart of the city over the same tracks for the last mile or so, this method of finding the average life gives a far greater weight to the tracks in the heart of the city than elsewhere, and gives to each mile of track an importance proportionate to its traffic.

The net income of the past year, less 6 per cent. assumed interest on the physical value, was considered the franchise value. The net income was increased 6 per cent. for the following year. The physical value was increased 3 per cent. to take care of the increase of traffic, and the franchise value was the net income, less 6 per cent. on the new physical value and so on until March 11, 1911. The franchise value of each year was then

reduced to present worth on the basis of 6 per cent. discount. This method closely resembled that used by the writer in valuing the Detroit railway franchises for the city and company in 1899. The result was a franchise value of $4,441,564.

Mr. Goff claimed that interest and discount should be figured at 5 per cent. instead of 6 per cent., and that the discount should be reckoned from the middle of each year, and the earnings computed to the end of the year. This would have added $544,276. The representative of the company also claimed a longer life on a few franchises and a little higher value on a few outside grants in later years of their franchise life. These claims would have added $1,800,188.

There was thus a difference, up to this point, between the concession of the city on the various items of overhead charges, financing and franchise values, and that claimed by the company, of $3,877,672.75. The company left to the mayor the determination of whether there should be any allowance, and how much, for good will or going value. Mr. Johnson on this point conceded $1,537,953. This brought up the total price recommended by the mayor to the Council to $21,014,131, or $11,700,000 above the bonds and other outstanding liabilities. This $11,700,000 was exactly 50 on the stock of $23,400,000. Mr. Goff not only claimed the larger sum for overhead charges and franchise values mentioned above, but also was not satisfied with the allowance for good will or going value, and some one or two other items. But, at last, early in April he agreed to recommend to his company the acceptance of 60 on the stock.

At this point the legislature, then in session, passed on April 9 the so-called Schmidt bill, which, after a public hearing attracting much attention, was approved by the governor, April 15. The Schmidt bill gave any com-

pany the right to bid for any franchise on a line whose old grant was just expiring, without securing the consent of property owners, on any street where such consent had already been given when the tracks were first laid. Moreover, it was generally conceded that some of the most important franchises had just expired, while many others would expire within two years. Since the new company was prepared to bid for these grants at a straight three-cent fare, much strength was now added to the city's side of the controversy. Soon after this Mr. Goff made a further compromise of 55 on the stock, which, after some hesitation, was accepted by the Mayor and the City Council. In this way the city finally offered, under the guise of good will, \$3,237,953, or a total price within \$550,000 of the claims of Mr. Goff with respect to physical value, overhead charges, and franchises.

The amount finally paid to the Cleveland Electric Railway Company was \$22,184,131, and to the Forest City and Low Fare Companies \$1,805,600, or a total of \$23,989,731. This was \$99,661 per mile for the 240.71 miles of the various roads consolidated, and about one-half more per mile than the physical value, as above given (p. 551), for the Cleveland Electric Railway Company.

Two criticisms only were made with any degree of strength and popular support. One was that 55 was too much to pay on the stock when the physical value was only \$15,000,000, or \$24.45 per share, aside from the bonds and other liabilities. After a series of mass meetings in different parts of the city, it was finally the almost unanimous conclusion that it was better to pay 55 and end the long war than to continue the fight. Many, however, believed, and still believe, that the city had finally reached the position where a year or two longer of contest would have secured the property at its physical value, or fully \$7,000,000 less than was paid for it.

The other criticism of the settlement was connected with a feature of the security or guaranty grant soon to be described. This feature was a provision that the old company, in case it resumed operation, should be allowed to charge five cents or six tickets for twenty-five. To be sure, the old company could never charge this amount unless the company that was leasing it, the Municipal Traction Company, should fail to pay its interest and other obligations, and it was held strongly by the mayor that it was not only to the interest of the old company to have the ample security it desired, in case it had to take back its property, but that it was to the interest of the people and of the Municipal Traction Company that it should be able to borrow money for needed extensions as cheaply as possible, and that, the better security it could give, the more cheaply it could borrow.

In order, however, to take away any temptation from the old company to embarrass the new or holding company and secure a forfeiture of the lease, it was provided that the holding company could itself, if necessary, charge any fare up to the amount of the security grant. But the mayor gave his personal pledge in the most public and outspoken fashion that the fare should never exceed three cents within the city limits, altho no promise was made that a cent might not be charged for transfers if that should be found necessary. As a matter of fact, one cent was announced for transfers for 90 days, ending with July 27, 1908, but a promise was given that after that the company would, for a while at least, and perhaps for all time, give free transfers.

Three transactions occurred simultaneously on April 27, 1908. No one of them can be considered apart from the other two, and all three must be considered in the light of the character and public standing of the directors

of the Municipal Traction Company, to be referred to again. These transactions were: (1) the sale of all the properties of the Forest City and the Low Fare Companies, at the par value of the stock and of the liabilities, to the old company, the Cleveland Electric Railway Company; (2) the passage by the City Council of the so-called guaranty franchise to the Cleveland Electric Railway Company; and (3) the lease of the property and rights of the latter to the Municipal Traction Company.

The price for the sale of the property has already been referred to. For every \$100 share of the old company \$55 par value of stock was given in the new company, while stock was issued at par in exchange for the stocks and obligations of the Forest City and Low Fare Companies.

The so-called security grant was given by Ordinance No. 11029, passed on its third reading April 27, 1908, and signed by Vice-Mayor Lapp on the same day. It provided that on the surrender which was then made by the Cleveland Electric Railway Company of all its existing rights in the streets, a new franchise should be granted for twenty-five years to "the Cleveland Electric Railway Company, the name of which is hereafter to be changed to the Cleveland Railway Company."

This company, which will henceforth be spoken of as the Railway Company, was given a grant over a large number of streets mentioned in the ordinance, and including substantially all the streets in the city then occupied by railway tracks. The city reserves the right to grant, on such terms as it may see fit, to any other person or corporation a joint occupancy in use for street railway purposes of all or any portion of the tracks, poles, wires, and electric current in the central district of the city about one mile square, whose boundaries are given in the grant. The company, unlike the old one, is not required

to repave, when streets are repaved, but only to pave in the first instance and to maintain in constant repair seven feet in width of street where there is single track and sixteen feet for double track. Provision is made for new equipment, and for the running of cars in such numbers and at such intervals as the city may require. The fare is to be five cents, with six tickets for a quarter and free transfers, under a few limitations to prevent abuse of transfers. Any child under six years must be carried free if accompanied by an older person, but only two children under six will be carried on payment of a single fare. The company may carry packages and operate observation and other special cars.

Section 10 provides that "the city reserves the right to purchase said street railroad, with all additions or extensions within the then city limits, at the termination of this grant, provided it have the power to do so, for such price and upon such terms and conditions as may be agreed upon between the city and the company, or, upon their failure to agree, then for such price and upon such terms as may be fixed by a board of arbitration consisting of three (3) persons, a majority of whom shall decide all questions." The selection of arbitrators is provided for, and the price is to be the cost of reproduction, less depreciation, but with an addition of 10 per cent. of the value of the physical property. Nothing is to be paid for the franchises. Section 12 further provides that, "if, at the expiration of this franchise, no extension or renewal thereof is granted by the city, and the city does not then purchase the property, any person to whom a franchise may be granted to operate a railroad over the then existing routes shall have the right and be under the obligation to purchase said railroad, upon the terms herein provided for purchase by the city by Section 11 hereof." And, finally, to make sure that the old situa-

tion is entirely done away with, still other sections specifically provide that the acceptance of the ordinance constitutes a surrender of all the old franchises; while any failure to conform to the requirements of the new franchise will result in its forfeiture.

We come now to the third of the three steps, the lease.

The Cleveland Electric Railway Company, having reduced its capital stock at the ratio of 100 to 55, taken over the Forest City and Low Fare Companies, and surrendered all its franchises in accord with the security ordinance, the new Railway Company signed a lease at the same hour to the Municipal Traction Company. This lease was for fifty years, with privilege of renewal every fifty years thereafter at the option of the Traction Company. The latter company at present has only $10,000 of stock, which at the time of the lease (April 27) was entirely owned by its five directors,—President A. B. duPont, Vice-President Frederick C. Howe, and Messrs. C. W. Stage, Edward Wiebenson, and William Greif. Immediately afterwards three others were added to the Board of Directors, Tom L. Johnson as treasurer and Messrs. Ben T. Cable and Newton D. Baker. It is hoped later to add Mr. F. H. Goff, president of the Cleveland Trust Company, and representative of the Railway Company in the negotiation leading to the lease. Mr. duPont was manager and later president of the Detroit street railways and afterwards vice-president and general manager of the St. Louis street railways before assuming charge of the Municipal Traction Company two years ago. Mr. Newton D. Baker is now city solicitor, and Mr. Frederick C. Howe, of the firm of Garfield, Howe & Westenhaver, attorneys, is a well-known writer on public questions. The others are prominent attorneys or business men.

There is, apparently, no legal way in which this self-perpetuating Board of Directors can be compelled to limit the dividends it may declare on its $10,000 of stock, or prevented from increasing that stock, nor is there any check on the salaries it may pay, or the fares it may charge not to exceed the fares mentioned in the security grant. On the other hand, the character and pledges of the directors and the alert state of public opinion satisfy most people that these men will not abuse their position.

The Traction Company must pay 6 per cent on the stock of the Railway Company. Any profits above that amount will be devoted, as the directors have assured the public, to extensions, improvement of the service, purchase and cancellation of the stock and debts of the Railway Company, reduction of fares, and the improvement of the condition and wages of the employees.

The Traction Company has the right at any time to buy the stock at 10 per cent. above the par value, and, according to the lease, may then sell the property to the city, if the city has the right to buy, at the same price at which it has acquired it from the Railway Company and without charging the city for any improvements made out of earnings. The company has also the right to assign the lease and the option of purchase just mentioned to the city of Cleveland, if the latter shall at any time have the right to own, purchase, or operate street railways. The directors have given the public to understand that they will use the power thus conferred to give the city possession whenever the city may have the right and desire to obtain the property. In view of the unsettled state of the law with respect to the right of cities to own and operate street railways, it was deemed inadvisable for the Traction Company to enter at present into any direct contract with the city relative to the above matters, lest the entire security grant and lease should be declared invalid.

Therefore, almost everything, in this respect as in many others, had to be left to the good faith of the directors.

It has already been mentioned, in considering the security grant, that, if the directors should refuse to arrange for city purchase on the terms above described, the city at the end of the twenty-five-year franchise can purchase on paying the arbitrated physical value plus 10 per cent. But it is provided in the lease that, unless the city renews the franchise on the same terms at least fifteen years before its expiration, the Traction Company shall forfeit all its control and property, and it shall all go to the railway company, with full rights of operation at a five-cent fare under the security grant.

This renewal of the franchise every ten years and at least fifteen years before its expiration must continue for all time, subject to the same penalty of forfeiture of the rights of the Traction Company. Consequently, if the directors of the latter company should refuse to sell to the city, the city could refuse to renew the grant to the Railway Company, which would then be entitled to charge five-cent fares for fifteen years. Thereafter the city would secure the property at its physical value, plus 10 per cent. But this precaution is not supposed to be really needed. The Traction Company, quite apart from the odium attaching to a betrayal of trust, would have no object in thwarting the contemplated plan. And it is believed that, long before the majority of the existing directors have left the board, the growing public sentiment throughout the State will force the legislature to allow municipal ownership, and that Cleveland will take advantage of the privilege.

In this connection it should be stated that, altho 50 per cent. more may have been paid for the property than its physical value, yet no water hereafter can be injected into the securities. No stock nor bonds can be sold for less than

par, and all the receipts from such sale, including premiums, must go into the property. Only 6 per cent. can be paid on the stock, and it is expected that the present bonds of $8,277,000, bearing 5 per cent., can be replaced by other bonds of no larger interest charge when they mature or by stock that will sell at such a premium as to be equivalent to 5 per cent. on the cash received.

Moreover, the lease provides that, after the issuance of $6,750,000 for extensions and $9,565,000 for redeeming the outstanding bonds and other debts, all further stock issues shall only be used to the extent of 80 per cent. of the cost of extensions, betterments, and permanent improvements. In other words, the other 20 per cent. must be furnished from earnings. As a further safeguard, it is provided that the Traction Company shall credit to a maintenance and renewal account, and charge to operating expenses each month, a sum equal to five cents per car mile during the first year following April 27, five and one-fourth cents the second year, and five and one-half cents each year thereafter until readjusted by arbitration. The mileage made by trailers not equipped with motors is to be computed at one-half the rate of motor cars.

Against this account may be charged all expenditures and disbursements made for maintenance, repairs, and renewals, and also for betterments, extensions, and permanent improvements, not paid for out of capital stock or the sale of unused property or proceeds of insurance policies or liquidated damages. Any credit to this maintenance account is every three months to be paid over by the Traction Company in cash to a trustee to be chosen by the Railway Company, or the Traction Company may invest the money in capital stock of the Railway Company at its market value or in other securities approved by the Railway Company, and deposit the same with the

trustee. The stock or other securities thus deposited must be sold at any time at the direction and request of the Traction Company, and the proceeds and all earnings from them or any cash in the hands of the trustee shall be paid out on the order of the Traction Company for any one of the above purposes of repair, renewal, or improvement of the property.

The Traction Company must also credit each month to the accident reserve fund, charging the same to operating expenses, seven-tenths of a cent per car mile during the first year of the lease, eight-tenths of a cent during the second year, and nine-tenths of a cent during each year thereafter until readjusted by agreement or arbitration. This is for the settlement of damage claims and legal expense connected therewith.

The rental of 6 per cent. on the stock is payable quarterly. There is a financial penalty for failure to pay promptly, but the lease is not forfeited unless the default lasts for more than eleven months.

Since there were several hundred thousand dollars in cash turned over to the Traction Company at the time of the lease as part of the property of the Railway Company, it is certain that the earnings above operating expenses and depreciation during the next two years, together with this accumulated cash, will meet the payments required by the lease. At the end of two years, if not much sooner, the Traction Company believes that the economies it is putting into force, and the increase of traffic upon short-distance rides and improvement in business conditions, will put the company on a safe financial basis for the future.

April 28, the day following the lease, all people were carried free upon the street-car lines of the city, and it is expected that this will be the custom every year here-

after on that day or on April 27, as a memorial of the interesting event. On April 29 three-cent fares were charged on all lines within the city limits. During ten days no transfers were given. After that a cent was charged for transfers, and the number using them, which had steadily risen from 18 per cent. in 1900 and 33 per cent. in 1904 to 41 per cent. in 1907, fell to 23 per cent. There had been some fraudulent use of transfers. In some way, bunches of transfers were secured, and a suitable punch, obtained cheaply, enabled some people to ride free all the time. Many barber shops also, and saloons on transfer corners, received transfers from passengers and gave them away to patrons.

At the end of ninety days from April 27 (that is, on July 27) the company ceased to charge for transfers within the city. There still remains a charge of five cents for those riding wholly in the suburbs or crossing the city boundary, unless the court shall hold that one or two suburbs have an agreement which compels a straight three-cent fare, even at a loss, in those districts.

The old company had an expense for operation, taxes, and depreciation of about three cents per passenger, and a profit of a little over one and one-half cents. The Traction Company, charging but three cents within the city, is confronted with the necessity of raising about $1,350,000 interest charges. This, on the basis of the traffic of about 135,000,000 passengers in 1907, means about one cent per passenger. In order to meet this interest charge, the company is counting upon the following, among other points.—

(1) The growth of business without a corresponding growth of operating expenses, through short rides in the heart of the city. These short rides will come both from the reduction of fares and from the rapid growth of the city, which now has 500,000 population within the city

limits. There are about 50,000 more in the county, immediately tributary to the city.

(2) The maintenance of five-cent fare in most or all of the suburbs.

(3) Economies of operation through a rearrangement of the tracks in the heart of the city, which are enabling the cars to pass through the congested districts much more rapidly, and, therefore, with much less platform expense than formerly.

(4) The adoption of pay-enter cars, as has been done with great success on some lines in New York, Buffalo, Chicago, and elsewhere. These pay-enter cars, with some improvements introduced by Mr. Johnson, will increase the receipts from 10 to 20 per cent. without much increase in expense. This is proved by the discovery, through careful inspection, that from 10 per cent. to 20 per cent. of the fares are not now collected or delivered to the company.

(5) All passes are cut off.

(6) Forty miles of new track are planned, which are expected to greatly increase traffic.

(7) No expenses will be incurred for litigation with the city or for political contests for franchises.

(8) A rearrangement of routes so as to save expense from unnecessary mileage. This had resulted through contests between the various street railways which had ultimately consolidated into the Cleveland Electric Railway Company, as well as from the competition between the latter and the Forest City and Low Fare Companies.

(9) When repaving is required for a whole street, the company will not have to bear the cost of repaving between its rails and a short distance each side, as heretofore, but will merely have to keep the old paving in repair for a width of seven feet in the case of single track and sixteen feet in the case of double track, and to put down paving

for that width in streets where new paving is for the first time laid.

(10) Less cars during the middle of the day, when there are few riding, and more cars at the congested hours, when some walk rather than stand in a crowded car.

Having regard to the above reasonable grounds of hope and to the reputation of Mr. Johnson as a street railway manager, the company looks forward confidently to financial success. The next two or three years will, naturally, be the hardest, but fortunately for the company, Mr. Goff, as representative of the old company, not only co-operated heartily with the mayor, but even took the lead in the preliminary negotiations before the lease to relieve the Traction Company during the coming year from some of the burdens of depreciation charges and the like, as already shown, which will be upon the company in the years that follow.

Contrary to general expectation, the Traction Company is not giving the opponents of municipal ownership a chance to charge that this partial approach to that system is a cause of extravagance in operating expenses. Rather has the criticism been that it was practising too great economy in its rearrangement of routes.

During the first few weeks following the lease the company put into effect many changes which Mr. Johnson and others connected with the new company had for a long time been considering as needed improvements. The changes benefited some who said little about it and interfered with the comfort and convenience of others who talked loudly. The changes annoyed others by the mere fact that they were not used to them. Cars running on one route or stopping at a certain corner might serve just as well if they ran in a somewhat different way and stopped at different corners, but for the time, until people could get used to the changes, there was confusion and discussion.

A few unprofitable routes were discontinued or the service thereon much curtailed. Cars were increased during the rush period and taken off during the slack period during the middle of the day. Many, too, were disappointed that there was a charge of one cent for transfers.

Many of these complaints have been adjusted, others will be with the abandonment of the charge for transfers at the end of July. Undoubtedly there will always be some who will feel that their service is not as good as before, while it is believed by the company that the mass of the people will find their service improved. Certainly, the average fare will be greatly reduced. The following illustrations taken from the business of one typical week, June 19–25 inclusive, will illustrate this:—

PRESENT RATES

2,826,546 fares at 3 cents	$84,796
88,058 suburban fares at 5 cents	4,403
690,653 transfers at 1 cent	6,907
Total	$96,106

OLD RATES.

2,826,546 fares at 4.71 cents	$133,130
88,058 suburban fares at 4 71 cents	4,148
690,653 transfers at zero	
Total	$137,278

Saving with the new rate, $41,172.
Percentage of saving, 30 per cent.

The average fare under the present rate ($96,106÷2,914,604) is 3.3 cents. This is even cheaper than seven tickets for twenty-five cents would be, with universal transfers, which the old company led the people to believe it would give if it could have a twenty-eight-year franchise. The average fare under that scheme, even if every one took

a ticket, would have been 3.57 cent, but, if one in ten paid a straight five-cent fare, the average charge would have been 3.71 cents. If two had paid a straight five-cent fare instead of buying tickets, which is not unlikely, the average fare would have been 3.86 cents. On the other hand, when the charge for transfers is abandoned, then the total receipts from passengers on this typical day's business will be $12,504, or 3.1 cents per passenger.

During the first quarter of 1908 the number of passengers carried by the two competing companies had fallen off 8 per cent. as compared with the corresponding period of 1907. This result of the hard times has in a measure continued even with the reduction of fares. The difficulty of rapid collection of three-cent fares leads to many losses which the pay-enter cars will remedy. Until the large task of equipping the road with these cars is completed, a year hence, or until the business depression is less severe, it may be necessary to return to the penny charge for transfers. With this charge still in force until July 28, that month showed a practical equality between the receipts on the one hand and the operating expenses, taxes, depreciation, and rental. On the other hand, May and June had shown deficits of $54,917 and $23,829, respectively. Free transfers will temporarily reduce the receipts 10 per cent., or $35,000 a month.

Of course, the new company is looking forward not to one or two years, but to the growth of business during the next twenty-five or fifty years. All of the so-called unearned increment of monopoly values from this growth will inure, first, to rendering certain the continuance of the three-cent fare, and then to the further improvement of the service and the condition of the men, and the cancellation of the outstanding stock and bonds so as to render municipal purchase easier and easier as the years go by.

A certain handicap upon the Traction Company, fortunately only temporary, was the strike of about three-fourths of its conductors and motormen on May 16. Space prevents a full description of the strike or discussion of its merits. A few facts, however, must be given. The Municipal Traction Company was the first street railway company in Cleveland in nine years that made any agreement with the labor unions. Such an agreement was made in 1906, and renewed with some changes on June 7, 1907, with the Amalgamated Association of Street and Electric Railway Employees of America through Local 445.

Just before signing the lease the Traction Company found that the Cleveland Electric Railway Company on December 22, 1906, had made a contract with its own employees, organized as Local No. 268. This contract provided for a closed shop, which was not in the Traction Company's contract, and for an increase of 2 cents an hour as soon as a new franchise should be secured. The Municipal Traction Company was advised by its attorneys and by the representative of the Cleveland Electric Company, Mr. F. H. Goff, that for some reasons this contract with the Cleveland Electric Company would not be binding upon the Municipal Traction Company, altho made between Local No. 268, on the one hand, and the Cleveland Electric Railway, "its successors, lessees and assigns," on the other hand; and the Municipal Traction Company believed that the contract was in the nature of a deal or a bribe to its employees, who previously had never been allowed to belong to any union.

While the Cleveland Electric Railway Company had been paying 24 cents per hour prior to the lease, the Municipal Traction Company was paying 25 cents per hour and furnishing uniforms worth at least $1 per month. It was requiring the men to pay their own fares going to and from work, but this was a less expense than the difference

of one cent per hour, to say nothing of the uniform. The men said, however, that they had ridden free on pleasure trips a great deal when at work for the Cleveland Electric Railway Company.

At this point, when it was a nice question of ethics, as between the contract that the Municipal Traction Company had made with its 300 own employees and the contract which the Cleveland Electric Railway Company had made with its 1,700 employees, the Amalgamated Association suddenly took away the charter of Local No. 445 on the ground that it was under the influence of the Municipal Traction Company, and then claimed that there was only one valid contract. Of course, the Municipal Traction Company then could say that it was a curious agreement which the national organization could repudiate by cancelling a charter, while the Municipal Traction Company could in no way cancel the contract which had come to it by virtue of the lease.

After some negotiations, arbitration was agreed upon. The two men appointed were to get to work within three days. Through the absence from the city of the representative of the Municipal Traction Company until the third day, which was unexpected, but not fully understood by the men, and through the somewhat summary discharge of fifty or more conductors for cheating and other conduct not befitting their work, the men most recklessly, and in violation of the spirit, if not the letter, of the arbitration agreement, went on a strike just as the arbitrators were ready to proceed.

The strikers were utterly defeated, and the union has gone to pieces. The new men, citizens of Cleveland, were kept at work and protected in their seniority rights so far as found competent, while the union, at the last, wanted the right to go back to work and replace the men who had taken their places. The use of dynamite by sympathizers

and in many cases old street railway employees hurt the men very much. The Municipal Traction Company has kept the support of most of the labor organizations. The official action of the Trades and Labor Assembly is hostile to the company, but does not apparently carry any large weight with the membership.

Opinions differ as to whether the Traction Company could have prevented the strike in any honorable and prudent way, but nearly all agree that the men did not have adequate cause for breaking off the arbitration proceedings and going on a strike. Fortunately, all did not leave. Some cars were run on most of the lines, even on the first day of the strike, and within ten days the dynamiting of cars on a few lines was stopped by the police and cars were running as usual. The strikers were allowed to come back on their old pay, as vacancies might occur. But not being able to secure a discharge of the new men and recover their former seniority rights, fully half of the strikers have thus far refused to return or to encourage the national body to declare the strike officially at an end. The men made the great mistake of attempting to use against the quasi-public corporation the same tactics and ethics of warfare that they would use against a private corporation. They failed to receive the public support which had attended a strike against the street railways about ten years ago, when in private hands. With so many out of work and with the Traction Company raising the wages a little at the very start, the public did not believe the men should make large demands upon the new company during the first two weeks of its history, before it was fairly on its feet. Street railway wages are already higher in Cleveland than in all but three or four of the large cities of the country. With the announced purpose of the Traction Company to raise them still higher as soon as possible, and without any private interest at stake seeking to absorb more than

6 per cent. on the value of the property, the labor conditions on the street railway will, doubtless, prove generally satisfactory.

While many able men contributed to bring about the transfer of the street railways of Cleveland to the present holding company and are still contributing to make the experiment a success, the lion's share of the credit for the past and the responsibility for the present and future belong to Mayor Johnson. His motives were expressed in the following language in the large meeting of representative citizens at the Chamber of Commerce on the night of April 27, when the final papers were signed and delivered, and the keys turned over by President Horace E. Andrews, of the Cleveland Electric Company, to the officers of the Municipal Traction Company:—

We have been engaged in a work that was not really a contest between men We were fighting for something—at least we felt we were—bigger than any mere opinion or acts of any individual. We have been struggling for something even beyond the accomplishment of three-cent fare, or municipal ownership, or the city's ownership of the streets, or any of those questions. We are trying, this people is trying, to set an example that others may follow in self-government, in some plan by which people living in great congested centres can govern themselves in the way that the greatest happiness will come to them This is our big object. Some of us to-night think of this big meeting as the end of a struggle; but, my friends, it is only a feeble beginning of other things that are yet to come. I don't regard it as an end, for the pathway to better things will be strewn by many battles and many struggles, but the truth will prevail in the end; and I am more confident now than ever in my life that the failure of democracy that is so often pointed out in our cities will be a thing that the next generation will point to as the success of democracy, for the hope of democracy at last is in our cities.

It is under conditions that we find people gathered here that the civilization of the future is going to be worked out, and

for the little part that I have played, or the part of our immediate friends, I want to say that we are grateful to be a part of it. To the great public and this council, who have helped in this work, on behalf of the council, I say that we are proud of being a part of it. But the real credit is due neither to the administration nor to the council it is due to the right-minded people of this community, and that at last is the measure of all the good that can come to any community.

I am glad to take a humble part in it, and I would rather, my friends, leave to those little grandchildren of mine the feeling that this community, which has trusted me, will never have occasion to regret it, than to leave to them any other heritage on earth.

E. W. Bemis.

City Water Department,
Cleveland, Ohio.